STATE OF MICHIGAN

COURT OF APPEALS

GREAT LAKES WATER AUTHORITY,

Plaintiff-Appellee,

v

DANIELS-KARIM INVESTMENTS, LLC,

Defendant-Appellant,

and

STORAGE OPERATIONS, LLC,

Defendant-Appellee,

and

DAVID LANCIAULT and WAYNE COUNTY TREASURER,

Defendants.

UNPUBLISHED
August 26, 2021

No. 354554
Wayne Circuit Court
LC No. 18-006894-CC

Before: CAVANAGH, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

Defendant, Daniels-Karim Investments, LLC (DKI), appeals as of right the circuit court's order regarding the enforcement of a purchase agreement between DKI and defendant, Storage Operations, LLC (Storage Operations), for the sale of real property on the grounds that (1) the circuit court erred when it found that Kenneth Daniels (Kenneth), a member of DKI, had the apparent authority to enter into an agreement for the sale of real property on behalf of DKI, and (2) the circuit court erred when it found that Kenneth ratified an amendment, made by his family members, to the agreement for the sale of real property on behalf of DKI. We affirm.

I. FACTUAL BACKGROUND

This matter arises out of a condemnation action in which plaintiff, the Great Lakes Water Authority (GLWA), sought to acquire a permanent overhead easement respecting property located at 9499 Copland in the city of Detroit. Before GLWA filed the condemnation action, Kenneth agreed to sell the subject property to Storage Operations on behalf of DKI. Kenneth negotiated the sale of the property with the sole member and manager of Storage Operations, David Lanciault. The purchase agreement included a provision that contemplated the commencement of condemnation proceedings before closing and permitted Storage Operations to close on the property to obtain proceeds associated with the condemnation action.

After the execution of the purchase agreement, the title insurance company found a variety of title issues which resulted in the amendment of the purchase agreement on multiple occasions to extend the closing date to permit Lanciault to attempt to clear title to the property while paying outstanding property taxes on behalf of DKI to protect the property from tax foreclosure. Later, Kenneth became incarcerated, so his son, David Daniels, and Kenneth's wife, Polett Daniels, executed an amendment to the purchase agreement on behalf of DKI. The amendment reduced the purchase price for the property from $40,000 to $30,000, and extended the inspection period through the taxable period paid by Storage Operations.

When Storage Operations attempted to close on the property to obtain the proceeds associated with the condemnation action, disputes arose regarding Kenneth's and his family members' authority to bind DKI to agreements. Following an evidentiary hearing, the circuit court determined that DKI cloaked Kenneth with the apparent authority to execute the purchase agreement, and Kenneth ratified the amendment to the purchase agreement made by David and Polett on behalf of DKI. Accordingly, the circuit court entered an order directing the enforcement of the purchase agreement because the purchase agreement, as amended, remained in effect, and Storage Operations wished to exercise its right to enforce the purchase agreement and receive the proceeds associated with the condemnation action. This appeal followed.

II. ANALYSES

DKI argues that the circuit court erred by ruling that Daniel had apparent authority to bind DKI to the real estate purchase agreement because DKI constituted a manager-managed limited liability company and Kenneth executed the purchase as a mere member of the company. We disagree.

The existence of an agency relationship is a question of fact that is reviewed for clear error. *Bellevue Ventures, Inc v Morang-Kelly Investment, Inc*, 302 Mich App 59, 64; 836 NW2d 898 (2013). "A finding is clearly erroneous if there is no evidentiary support for the finding or, after reviewing the entire record, this Court is definitely and firmly convinced that the trial court made a mistake." *Menhennick Family Trust v Menhennick*, 326 Mich App 504, 509; 927 NW2d 741 (2018) (citation omitted). This Court must give "special deference to the trial court's findings when they are based on its assessment of the witnesses' credibility." *H J Tucker & Assoc, Inc v Allied Chucker & Eng Co*, 234 Mich App 550, 563; 595 NW2d 176 (1999); MCR 2.613(C).

Although DKI argued in the circuit court that its operating agreement only permitted Latif Oram to sell property, DKI did not argue to the circuit court as it now does for the first time on appeal that, under the Michigan Limited Liability Company Act, MCL 450.4101 *et seq*. (MLLCA), as a member of DKI but not its manager, Kenneth lacked statutory authority to bind DKI to any agreements. "For an issue to be preserved for appellate review, it must be raised, addressed, and decided by the lower court." *Mouzon v Achievable Visions*, 308 Mich App 415, 419; 864 NW2d 606 (2014) (quotation marks and citation omitted). Because DKI failed to raise this argument before the circuit court, this issue is unpreserved. This Court reviews unpreserved claims of error in civil cases for plain error affecting a litigant's substantial rights. *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000) (quotation marks and citation omitted). Plain error affects a litigant's substantial rights if the party is prejudiced by the error, meaning that the error affected the outcome of the lower court proceedings. *Duray Dev, LLC*, 288 Mich App at 150.

Under MCL 450.4402(1), "[t]he articles of organization may provide that the business of the limited liability company shall be managed by or under the authority of 1 or more managers." "If the articles of organization delegate management of a limited liability company to managers, the articles of organization constitute notice to third parties that managers, not members, have the agency authority described in section 406." MCL 450.4402(4). "A manager is an agent of the limited liability company for the purpose of its business, and the act of a manager, including the execution in the limited liability company name of any instrument . . . binds the limited liability company." MCL 450.4406.

DKI's articles of organization provided for the management of DKI's business by or under the authority of a manager. Under MCL 450.4402(4) and MCL 450.4406, therefore, third parties were put on notice that DKI's manager, not its members, had the authority to execute instruments binding DKI. According to DKI, these statutory provisions resulted in Kenneth, as a member and not a designated manager of DKI lacking any authority, whether actual or apparent, to bind DKI. We disagree.

DKI correctly points out that, as a member of DKI, Kenneth lacked the actual authority to bind DKI to agreements. However, this case required the circuit court to determine whether Kenneth possessed apparent authority to bind DKI. "Apparent authority arises where the acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Alar v Mercy Mem Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995).

In this case, the record reflects that the acts and appearances of DKI and Kenneth would have led a third person to reasonably believe that an agency relationship existed and that DKI cloaked Kenneth with the apparent authority to act on its behalf. Thus, even if third parties were put on notice under the MLLCA that DKI's manager had the actual authority to execute instruments binding DKI, the acts and appearances of DKI and Kenneth could lead a third person to reasonably believe that Kenneth had the authority to execute instruments binding DKI. Indeed, a third party like Storage Operations could reasonably have believed that Kenneth's authority to execute instruments binding DKI did not arise solely from his status as a member of DKI, but rather, arose from a delegation of authority to him or in some other manner.

DKI urges this Court to interpret the MLLCA to require that, under no circumstances could a nonmanager of the company possess the apparent authority to bind the company. DKI, however, has failed to set forth any authority supporting its contention. Accordingly, the MLLCA did not preclude Kenneth from possessing the apparent authority to bind DKI to agreements, and DKI has failed to establish plain error affecting its substantial rights.

Further, the circuit court did not clearly err when it found that Kenneth had the apparent authority to enter into an agreement for the sale of real property on behalf of DKI. "Under fundamental agency law, a principal is bound by an agent's actions within the agent's actual or apparent authority." *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001) (citations omitted). "Actual authority may be either express or implied." *Alar*, 208 Mich App at 528. "Implied authority is the authority that an agent believes the agent possesses." *Id*. (citation omitted). "Apparent authority arises where the acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Id*. "However, apparent authority must be traceable to the principal and cannot be established only by the acts and conduct of the agent." *Id*. (citation omitted). Apparent authority is determined by analysis of all the facts and circumstances. *Atl Die Casting Co v Whiting Tubular Products, Inc*, 337 Mich 414, 422; 60 NW2d 174 (1953). A person's belief in an agent's authority is justifiable if "a person of ordinary prudence, conversant with business usages and the nature of the particular business" would believe that the agent had such authority. *Maryland Cas Co v Moon*, 231 Mich 56, 62; 203 NW 885 (1925) (quotation marks and citation omitted).

The record reflects that the acts and appearances of Kenneth and DKI could reasonably influence a prudent person to believe that Kenneth had apparent authority to act on behalf of DKI. Kenneth was one of two members of DKI. DKI included his last name in the company name. Kenneth repeatedly represented to Lanciault that he owned DKI and that he could complete the transaction on behalf of DKI. Notably, the signature lines in each of the amendments to the purchase agreement provided that Kenneth signed "on behalf of Daniels-Karim Investments LLC[.]" The signature line on the "Claim of Interest in Real Property" document that Kenneth signed after his release from incarceration identified Kenneth as the "authorized representative of Daniels-Karim [I]nvestments, LLC[.]" The record reflects further that, over the course of several years, Lanciault only negotiated with Kenneth and Kenneth's family members. Accordingly, Storage Operations and its agent, Lanciault, had little reason, if any, to question Kenneth's authority to sell the property. Indeed, as the circuit court observed, Kenneth identified himself as DKI's managing member, albeit not under the terms of the company's operating agreement.

Moreover, the members of DKI, Kenneth and Oram,[1] stood silent over the course of several years as Lanciault paid property taxes on the property and worked to clear title to the property to

[1] On appeal, DKI seeks to rely upon Oram's December 3, 2019 affidavit in which he asserts that he had no knowledge of the purchase agreement or Lanciault's payment of the property taxes. We decline to consider Oram's affidavit because it was not before the circuit court at the time the circuit court reached its decision. See *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 120; 839 NW2d 223 (2013) (noting that appellate review of the trial court's decision is limited to the evidence that had been presented at the time of the trial court's decision).

enable completion of the sale. Lanciault negotiated with the taxing authority for payment of property taxes over time and made the payments which preserved the property from tax foreclosure while DKI failed to pay those taxes. For all of these reasons, we are not left with a definite and firm conviction that the circuit court committed plain error when it found that Kenneth had the apparent authority to enter into an agreement for the sale of real property on behalf of DKI.

DKI also argues that the circuit court clearly erred when it found that Kenneth ratified the amendment to the purchase agreement made by David and Polett on behalf of DKI. We disagree.

"Any question relating to the existence and scope of an agency relationship is a question of fact." *Hertz Corp v Volvo Truck Corp*, 210 Mich App 243, 246; 533 NW2d 15 (1995) (citation omitted). This Court reviews a circuit court's factual findings for clear error. *Id*. "A finding of fact is clearly erroneous only if there is no evidence to support it or if the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been made." *Id*. (citation omitted).

If an agent who purports to act on behalf of his principal exceeds his actual or apparent authority, the principal remains bound if the principal ratifies the act. *David v Serges*, 373 Mich 442, 443-444; 129 NW2d 882 (1964). "Ratification is the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by him." *Id*. at 444 (quotation marks and citation omitted). Affirmance is either "a manifestation of an election by one on whose account an unauthorized act has been done to treat the act as authorized," or "conduct by him justifiable only if there were such an election." *Id*. (quotation marks and citation omitted).

The record reflects that David and Polett had the apparent authority to act on Kenneth's behalf during Kenneth's incarceration. Lanciault testified that he spoke with Kenneth on the telephone during Kenneth's incarceration and Kenneth stated that Lanciault could continue negotiations for the purchase of the subject property with David and Polett. Although Kenneth testified that David and Polett executed the amendment to the purchase agreement without his permission, the trial court did not find his testimony credible, because after his release from incarceration, Kenneth executed the "Claim of Interest in real Property" document which acknowledged Storage Operations' interest in the property and Kenneth's and DKI's acquiescence in Lanciault's ongoing payment of the property taxes. We defer to the circuit court's findings based on its assessment of the witnesses' credibility. *H J Tucker & Assoc*, 234 Mich App at 563; MCR 2.613(C). In this case, the circuit court presided at the evidentiary hearing and saw the witnesses testify first-hand. As a result, the circuit court sat in a better position to weigh each witness's credibility and to resolve the factual disputes presented by that testimony.

The record supports the circuit court's findings and credibility determinations. Kenneth ratified the amendment to the purchase agreement made by David and Polett on behalf of DKI. After Kenneth's release from prison, Lanciault and Kenneth signed a "Claim of Interest in Real Property" document which specified that DKI and Storage Operations executed a real estate purchase agreement for the purchase of the subject property and later executed several amendments to the purchase agreement. Notably, the document specifically referenced the amendment to the purchase agreement signed by David and Polett. The document was notarized, and Lanciault intended to record the document. Kenneth's act of signing the document manifested

an election to treat the acts of David and Polett as authorized. Accordingly, Kenneth with apparent authority to act on behalf of DKI ratified the amendment to the purchase agreement made by David and Polett. In so doing, Kenneth bound DKI. The circuit court did not clearly err.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Colleen A. O'Brien
/s/ James Robert Redford